

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
DECEMBER SESSION, 1996

**FILED**

February 27, 1997

**Cecil Crowson, Jr.**  
Appellate Court Clerk

**KENNETH ROBERT DANIELS,** )  
  ) )  
          Appellant                  ) )  
  ) )  
vs.                                      ) )  
  ) )  
**STATE OF TENNESSEE,**          ) )  
  ) )  
          Appellee                   ) )

No. 03C01-9606-CC-00244

JOHNSON COUNTY

Hon. Lynn W. Brown, Judge

(Petition For Writ of Habeas Corpus)

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District Attorney General

OPINION FILED: \_\_\_\_\_

AFFIRMED

**David G. Hayes**  
Judge

## OPINION

The appellant, Kenneth Robert Daniels, appeals the order of the Johnson County Circuit Court dismissing his petition for writ of habeas corpus. On January 15, 1993, the appellant pled guilty in the Knox County Criminal Court to one count of second degree murder and to one count of especially aggravated robbery. He is presently confined at the Northeast Correctional Center in Johnson County where he is serving an effective sentence of forty years for these convictions. On March 19, 1996, the appellant filed a *pro se* petition for writ of habeas corpus in the Johnson County Circuit Court. The petition alleges that the appellant's guilty pleas were the result of a plea agreement that he did not fully understand and that his due process rights were violated therein. The petition also alleges ineffective assistance of counsel at trial. On April 30, 1996, the trial court properly dismissed the petition finding that the petition failed to state a claim upon which habeas corpus relief may be granted. Archer v. State, 851 S.W.2d 157, 161 (Tenn. 1993); Passarella v. State, 891 S.W.2d 619, 626-27 (Tenn. Crim. App. 1994); Tenn. Code Ann. § 29-21-101 (1980 Repl.).

On appeal, the appellant does not contest this dismissal. Rather, he challenges a portion of the trial court's order which states: "All of these grounds must be presented in a petition for post-conviction relief in the Criminal Court for Knox County. However, the three-year statute of limitations for post-conviction relief ran on January 15, 1996." The appellant argues that, on the date the trial court entered its findings, April 30, 1996, the statute of limitations for the filing of a petition for post-conviction relief had not run. He asserts that the new Post-Conviction Procedure Act provides a "one year window" from May 10, 1995, to file a petition for post-conviction relief. Thus, the "window" for the filing of his petition remained open for ten more days. Relying upon the statement of law from the trial court, the appellant argues that he "filed a notice of appeal to this

Court on the day he should have filed his petition for post-conviction relief in Knox County." Acknowledging that the one year statute of limitations under the new Act expired on May 9, 1996, he now requests that we permit him to late file his petition for post-conviction relief pursuant to the supreme court's ruling in Norton v. Everhart, 895 S.W.2d 37 (Tenn. 1995) and Rule 36(a), Tenn. R. App. P. Neither Norton, 895 S.W.2d at 37, nor Tenn. R. App. P. 36(a) grants this court the authority to enlarge the limitation period for the filing of a petition for post-conviction relief. Accordingly, we decline to do so.

The record supports the trial court's conclusion that the three-year statute of limitations applicable to a petition for post-conviction relief in the instant case had expired. See Tenn. Code Ann. § 40-30-108 (repealed 1995). As the trial court found, the applicable limitation period expired on January 15, 1996. The new Post-Conviction Procedure Act became effective May 10, 1995, reducing the statute of limitations period from three years to one year. Tenn. Code Ann. § 40-30-202(a) (1995 Supp.). Section 3 of Tenn. Pub. Act 207, which is not codified, but is noted in the Compiler's Notes, Tenn. Code Ann. § 40-30-201 (1995 Supp.), provides that "any person having ground for relief recognized under this part shall have at least one year from May 10, 1995, to file a petition . . . under this part." Thus, the limitation provision of the new Act, in effect, creates three potential categories of petitioners, whose petition is filed on or after May 10, 1995. (1) Those petitioners whose three-year statute of limitations expired before May 10, 1995. A petitioner in this category is time-barred from the filing of a petition because the applicable three-year statute of limitations has extinguished any remedy available under the Act. (2) Those petitioners whose three-year period was "cut short" by the enactment of the new one-year statute of limitations. The effect upon the petitioner in this group is that the three-year limitations period will be reduced to one year plus the period from the date of the petitioner's final conviction and May 9, 1995. Finally, (3), as in this case *sub*

*judice*, those petitioners whose three year limitation period expired during the period between May 10, 1995, and May 9, 1996. A petitioner in this category would, in effect, be granted an enlargement of the three year limitation period, conceivably to a maximum period of one day less than four years. We reject this enlargement argument holding that the new Act does not toll the statute of limitations for the balance of the year following the effective date of the Act.

The legislative intent behind the Act is clear, i.e., “to limit the number of post-conviction petitions that a defendant could file and to reduce the time in which he could file them.” See Carter v. State, No. 03C01-9509-CC-00270 (Tenn. Crim. App. at Knoxville, July 11, 1996), perm. to appeal granted, (Tenn. Dec. 2, 1996) (Welles, J., dissenting) (emphasis added). Thus, we conclude that the legislative intent was neither to revive extinguished remedies nor to enlarge the three-year statute of limitations period for the filing of a petition for post-conviction relief.<sup>1</sup> See Butler v. State, No. 02C01-9509-CR-00289 (Tenn. Crim. App. at Jackson, Dec. 2, 1996); Butler v. Bell, No. 02C01-9510-CC-00297 (Tenn. Crim. App. at Jackson, Nov. 19, 1996); Carter, No. 03C01-9509-CC-00270 (Welles, J., dissenting).<sup>2</sup> Accordingly, a petitioner filing a post-conviction petition on or after May 10, 1995, is not entitled to benefit from both the three-year and the one-year statutes of limitations. As the trial court correctly found the limitation period to have expired on January 15, 1996, the appellant had no cognizable claims for relief under the new Act.

Accordingly, we find no error of law mandating reversal. The trial court's dismissal of the appellant's petition for habeas corpus relief is affirmed.

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<sup>1</sup>The referenced dates are subject to the provisions of Tenn. R. Crim. App. Rule 45(a), involving computation of time.

<sup>2</sup>One panel of this Court has held that the new Act provides “a one-year window” during which every defendant under a sentence is entitled to file a petition. Carter, No. 03C01-9509-CC-00270.

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DAVID G. HAYES, Judge

CONCUR:

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DAVID H. WELLES, Judge

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THOMAS T. WOODALL, Judge